

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANISATION,
Plaintiff,

V.

ACER, INC.,
ACER AMERICA CORPORATION,
ACER AMERICA HOLDING COMPANY,
BOARDWALK CAPITAL HOLDINGS, LTD.,
and GATEWAY, INC.
Defendants.

[illegible]

Case No. _____

Jury Demanded

PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Commonwealth Scientific and Industrial Research Organisation (“CSIRO”) hereby for its Complaint against Defendants, Acer, Inc. (“Acer”), Acer America Corporation (“Acer America”), Acer America Holding Company (“AAHC”), Boardwalk Capital Holdings, Ltd. (“Boardwalk”), and Gateway, Inc. (“Gateway”), (collectively “Defendants”), alleges:

THE PARTIES

1. CSIRO is one of the largest and most diverse scientific research institutions in the world, and has a principal place of business at Limestone Avenue, Campbell ACT 2612, Australia.

2. CSIRO is informed and believes, and on that basis alleges, that Acer is a corporation organized and existing under the laws of Taiwan, having a principal place of business at 8F, 88, Sec. 1, Hsin Tai Wu Rd., Hsichih, Taipei 221, Taiwan, R.O.C.

3. CSIRO is informed and believes, and on that basis alleges, that Acer America is a corporation organized and existing under the laws of California, having a principal place of business at 333 West San Carlos Street, Suite 1500, San Jose, CA 95110.

4. CSIRO is informed and believes, and on that basis alleges, that AAHC is a corporation organized and existing under the laws of Delaware, having a principal place of business at 7565 Irvine Center Drive, Irvine, California, 92618.

5. CSIRO is informed and believes, and on that basis alleges, that Boardwalk is a corporation organized and existing under the laws of the British Virgin Islands, having a principal place of business at c/o Harney Westwood & Riegels, Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands.

6. CSIRO is informed and believes, and on that basis alleges, that Gateway is a corporation organized and existing under the laws of Delaware, having a principal place of business at 7565 Irvine Center Drive, Irvine, California, 92618.

JURISDICTION AND VENUE

7. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that each Defendant has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, entitling CSIRO to relief.

INFRINGEMENT OF U.S. PATENT NO. 5,487,069

8. On January 23, 1996, United States Patent No. 5,487,069 (the “‘069 Patent”) was duly and legally issued for inventions entitled “Wireless LAN.” CSIRO holds all rights and

interest in the '069 Patent. A true and correct copy of the '069 Patent is attached hereto as Exhibit A.

9. Upon information and belief, Defendants have infringed directly and indirectly and continues to infringe directly and indirectly the '069 Patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of products practicing the IEEE 802.11a, 802.11g and/or draft 802.11n standards. The accused products do not include products practicing or implementing the IEEE 802.11a/g/ and/or draft n standards solely through the use of Wireless LAN integrated circuits supplied by Intel Corporation. Defendants are liable for infringement of the '069 Patent pursuant to 35 U.S.C. §271.

10. The acts of infringement by Defendants, and each of them, have caused damage to CSIRO and CSIRO is entitled to recover from Defendants, and each of them, the damages sustained by CSIRO as a result of their wrongful acts in an amount subject to proof at trial. The infringement of CSIRO's exclusive rights under the '069 Patent by Defendants, and each of them, has damaged and will continue to damage CSIRO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

11. Upon information and belief, Defendants, and each of them, have knowledge of their infringement of the '069 Patent, yet each Defendant continues to infringe said patent. The infringement of the '069 Patent by Defendants, and each of them, is willful and deliberate, and with full knowledge of the patent, entitling CSIRO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

12. CSIRO hereby demands a trial by jury on all issues.

PRAYER FOR RELIEF

13. WHEREFORE, Plaintiff CSIRO requests entry of judgment in its favor and against Acer, Acer America, AAHC, Boardwalk, and Gateway as follows:

- a. Declaration that Defendants, and each of them, have infringed the '069 Patent;
- b. Permanently enjoining Defendants, and each of them, their officers, agents, employees, and those acting in privity with them, from further direct and/or indirect infringement of the '069 Patent;
- c. Awarding damages arising out of the infringement of the '069 Patent by Defendants, and each of them, including enhanced damages pursuant to 35 U.S. C. § 284, to CSIRO, together with prejudgment and post-judgment interest, in an amount according to proof;
- d. An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and,
- e. For such other costs and further relief as the Court may deem just and proper.

Dated: September 9, 2009

Respectfully submitted,

/s/ S. Calvin Capshaw
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